



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1195]

Certain Electronic Candle Products and Components Thereof; Notice of a Commission Determination to Affirm the Remand Initial Determination with Certain Modifications and to Find No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has, on review, determined to affirm the remand initial determination (“RID”) issued on December 29, 2021, finding that Complainants failed to establish the economic prong of the domestic industry requirement in the above-referenced section 337 investigation. The Commission has determined to modify the RID as explained in the Commission opinion issued herewith.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 6, 2020, the Commission instituted this investigation based on a complaint filed by complainants L&L Candle Company LLC of Brea, California and Sotera Tschetter, Inc. of St. Paul, Minnesota (together, “Complainants”). 85 FR 19158-59 (Apr. 6, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for

importation, and the sale within the United States after importation of certain electronic candle products and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,550,660; 9,366,402; 9,512,971; 9,523,471; and 10,533,718. *Id.* The notice of investigation named as respondents: The Gerson Company of Olathe, Kansas; Gerson International (H.K.) Ltd. of Hong Kong; Sterno Home Inc. of Coquitlam, Canada; Ningbo Huamao International Trading Co., Ltd. of Ningbo City, China; Ningbo Yinzhou Langsheng Artware Co., Ltd. of Ningbo City, China; Lifetime Brands, Inc. of Garden City, New York; Scott Brothers Entertainment, Inc. of Las Vegas, Nevada; Nantong Ya Tai Candle Arts & Crafts Co., Ltd. of San Gabriel, California; NapaStyle, Inc. of Napa, California; Veraflame International, Inc. of Vancouver, Canada (“Veraflame”); MerchSource, LLC of Irvine, California; Ningbo Mascube Import Export Company of Ningbo City, China (“Ningbo Mascube”); Decorware International Inc. dba Decorware Inc. of Rancho Cucamonga, California; Shenzhen Goldenwell Smart Technology Co., Ltd. of Shenzhen City, China; Shenzhen Ksperway Technology Co., Ltd. of Shenzhen City, China; Ningbo Shanhuang Electric Appliance Co. of Ningbo City, China (“Ningbo Shanhuang”); Yiwu Shengda Art Co., Ltd. of Yiwu City, China (“Yiwu Shengda”); Shenzhen Tongfang Optoelectronic Technology Co., Ltd. of Shenzhen City, China; TFL Candles of Shenzhen City, China; Guangdong Tongfang Lighting Co., Ltd. of Hong Kong; Tongfang Optoelectronic Company of Hong Kong; and Virtual Candles Limited of Kent, United Kingdom (“Virtual Candles”). *Id.* at 19159. The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.*

Of the twenty-two respondents, five were terminated based on consent orders, eight were terminated based on settlement agreements, three were terminated based on a voluntary withdrawal of the complaint due to an inability to serve, and one was terminated based on a summary determination of no importation. *See* Order No. 7 (May 4, 2020), *unreviewed by* Comm’n Notice (Jun. 3, 2020); Order No. 37 (Dec. 17, 2020), *unreviewed by* Comm’n Notice (Jan. 5, 2021); Order No. 12 (Jun. 15, 2020), *unreviewed by* Comm’n Notice (Jun. 20, 2020);

Order No. 15 (Jul. 15, 2020), *unreviewed by* Comm’n Notice (Aug. 5, 2020); Order No. 29 (Oct. 19, 2020), *unreviewed by* Comm’n Notice (Nov. 2, 2020); Order No. 38 (Dec. 18, 2020), *unreviewed by* Comm’n Notice (Jan. 5, 2021); Order No. 39 (Dec. 18, 2020), *unreviewed by* Comm’n Notice (Jan. 5, 2021). The Commission found the following five remaining respondents in default for failing to respond to the complaint and notice of investigation and for failing to show cause why they had not done so, or for failing to participate in discovery: Veraflame, Ningbo Mascube, Ningbo Shanhuang, Yiwu Shengda, and Virtual Candles (“the Defaulting Respondents”). *See* Order No. 14 (Jul. 8, 2020), *unreviewed by* Comm’n Notice (Aug. 3, 2020) (finding Veraflame, Ningbo Mascube, and Virtual Candles in default); Order No. 33 (Nov. 12, 2020), *unreviewed by* Comm’n Notice (Nov. 30, 2020) (finding Yiwu Shengda and Ningbo Shanhuang in default).

On November 13, 2020, Complainants moved for a summary determination of violation as to the Defaulting Respondents and for a recommendation for the issuance of a general exclusion order. On December 4, 2020, OUII filed a response that questioned whether Complainants had satisfied the economic prong of the domestic industry requirement, but otherwise supported a finding of violation of section 337 and issuing a general exclusion order. On April 2, 2021, the ALJ issued an initial determination (“ID”), Order No. 41, granting Complainants’ motion for summary determination of violation by each of the five Defaulting Respondents. Order No. 41 (Apr. 2, 2021).

On May 19, 2021, the Commission determined on its own motion to review the ID’s finding that Complainants satisfied the economic prong of the domestic industry requirement. 86 FR 28143-46 (May 25, 2021). On August 13, 2021, the Commission vacated the findings in the ID on the economic prong of the domestic industry requirement and remanded the investigation to the then Chief Administrative Law Judge (“ALJ”) for the issuance of a remand initial determination.

On December 29, 2021, the then Chief ALJ issued the subject RID, finding that Complainants failed to establish the economic prong of the domestic industry requirement. On January 20, 2022, Complainants filed a petition for review of the RID. On January 28, 2022, OUII filed a response to Complainants' petition.

On April 1, 2022, the Commission determined to review the RID, but did not request further briefing from the parties. 87 FR 20459-60 (Apr. 7, 2022).

Having examined the record of this investigation, including the RID, the petition for review, and the response thereto, the Commission has determined to affirm the RID's finding that Complainants have failed to establish the economic prong of the domestic industry requirement in this investigation. The Commission has determined to modify the RID as explained in the Commission opinion issued herewith. Accordingly, the Commission finds that there has been no violation of section 337 as to the Defaulting Respondents.

Commissioner Schmidtlein dissents from the Commission's decision and has filed a separate opinion explaining her views.

The Commission vote for this determination took place on July 14, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: July 14, 2022.

William Bishop,
Supervisory Hearings and Information Officer.